SINGLE BENCH (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION No. 3468 /2006

(S)

PETITIONER - Smt. Manjeeta Patel W/O Shri Prakash Bhai Patel, R/O Gram Odari Block – Wadrafnagar, Tehsil- Wadrafnagar, Distt- Sarguja (C.G.)

P.R. No. 3527/06
Presented by Shri Nageyr Mohta
Dated 12/7/06

VERSUS

RESOPONDENTS 1- Smt. Geetanjali Patel W/O Shri Omprakash Patel, Cast-Kunavi , R/O Village - Odari, Graam Panchyat Odari, Block – Wadrafnagar, Tehsil- Wadrafnagar, Distt.-Sarguja (C.G.)

2- Bindeshwar singh S/O Rupsai Cast – Gond, Secretary ,Graam Panchyat Odari, Block – Wadrafnagar, Tehsil - Wadrafnagar, Distt. - Sarguja (C.G.)

3- Shri Hardev singh S/O Shri Ramrup, Cast– Gond, Sarpanch ,Graam Panchyat Odari, Block- Wadragnagar, Tehsil- Wadrafnagar, Distt.- Sarguja (C.G.)

4- Shri Harish Chandra Gupta S/O Shri Mahabir Gupta, Janpad Vice President/ President Permanent Education Sameeti , Wadrafnagar, Tehsil- Wadrafnagar, Distt.- Sarguja (C.G.)

5- Chief Executive Officer, Janpad Panchayat Wadrafnagar, Tehsil- Wadrafnagar, Distt.- Sarguja , (C.G)

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6- Upper Collector, Sarguja, Ramanujganj District-Surguja (C.G.)

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

(116) AFR

11.10.06

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 3468 of 2006

Petitioner : Smt. Manjeeta Patel

Versus

Respondents : Smt. Geetanjali Patel & others

Shri Abhishek Sinha, Advocate and Shri Neeraj Mehta, Advocate for the petitioner.

Shri D. N. Prajapati, Advocate for the respondent No.1.

Shri Sanjay Patel, Advocate for the respondents No. 2 and 3.

Shri Pawan Shrivastava, Advocate for the respondent No.4.

Shri Ajay Dwivedi, Panel lawyr for the respondent No.6.

ORDER

(11th October, 2006)

1. The petitioner has assailed the award of the order dated 28.6.2006 passed by the Additional Collector, Ramanujganj, District- Suruguja in Panchayat Appeal No. 2/B-121/2005-2006 being without jurisdiction.

2. The undisputed facts in nut shell are that the petitioner was appointed as Guruji under the Rajeev Gandhi Shiksha Guarantee Scheme (for short 'the E. G. S.'), sponsored by the Rejeev Gandhi Shiksha Mission at village Odari, Block Wadrafnagar, District- Sarguja.

3. Being aggrieved by non-appointment of the respondent No.1, she had filed an appeal before the Additional Collector under Section 91 of the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (for short 'the Adhiniyam, 1993'). By order dated 28.6.2006, the Additional Collector without considering the facts as to whether he has

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jurisdiction to decide the appeal against the order of the appointment of Guruji under the E. G. S. or not, proceeded to decide the appeal and cancelled the appointment order dated 4.7.2003 passed in favour of the petitioner. It was further directed to initiate process for making fresh appointment.

4. Heard learned counsel for the parties and perused the records appended to the petition and return thereto.

5. I am of the view that the Additional Collector has no jurisdiction to entertain the appeal against the order of appointment of Guruji under the E. G. S. The E. G. S. provides in clause 7 that an appeal is maintainable before the Chief Executive Officer of Janpad Panchayat of the concerned Gram Panchayat against the orders passed by the Gram Panchayat under the E. G. S.

6. Rule 3 of the Madhya Pradesh Panchayats (Appeal and Revision) Rules, 1995 (for short 'the Rules, 1995') have been framed in exercise of the powers conferred by the sub-section (1) of Section 95 read with Section 91 of the Adhiniyam, 1993, which provides for appeal and the appellate authority. It clearly provides that appeal against the order passed under the provisions of the Adhiniyam 1993 shall be maintainable to the Sub Divisional Officer against the order passed under the Adhiniyam, 1993.

7. The appointment of the petitioner on the post of Guruji was not under the provisions of the Adhiniyam, 1993 and the Rules made thereunder, and as such, Section 91 of the Adhiniyam, 1993 cannot be invoked. Even otherwise, Rule 3 of the Rules, 1995 excludes the jurisdiction of the Sub Divisional Officer in appeal if the same has been otherwise provided under the Acts and Rules or by laws thereunder.

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8. In the present case the appeal has been provided under the E. G. S. wherein the appointment of the petitioner as Guruji was made. There is a clear provision under Clause 7 of the Rajeev Gandhi Education Guarantee Scheme thus the provisions of the Adhiniyam, 1993, particularly Section 91 is not applicable.

9. For the reasons stated above and as a result this petition is allowed and the order dated 28.6.2006 passed by the Additional Collector in Panchayat Appeal No. 2/B-121/2005-2006 is set aside. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur